



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 7, 1996

Mr. John Steiner
Division Chief
City of Austin
Department of Law
P.O. Box 1088
Austin, Texas 78767-1088

OR96-0905

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 39587.

The Austin Police Department (the "department") received an open records request for "any and all incident reports, investigations, etc. regarding any reports made in connection with Tracy Lynn Parsons." You state that the request encompasses four department offense reports, three of which will be made available to the requestor. The remaining offense report pertains to the department's investigation of the disappearance and homicide of Parsons. You state that the department's investigation resulted in the prosecution and conviction of Donald Lee Wilson for the murder of Parsons, but that Wilson's conviction is currently on appeal. *See Wilson v. State*, No. 03-93-00687-CR (Tex. App.--Austin) *motion for rehearing pending*. You seek to withhold the offense report at issue pursuant to the "litigation exception," section 552.103 of the Government Code.

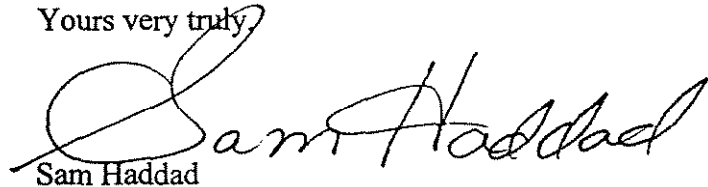
To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. In this instance you have demonstrated that the requested information relates to pending litigation. Further, although the City of Austin is not a party to the litigation, you have submitted to this office a letter from an assistant district attorney of Williamson County where the murder charges were prosecuted asking that the offense report be withheld from the public at this time pursuant to section 552.103. We therefore

conclude that, except for those portions of the offense report that are specifically made public under *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), the department may withhold the report at this time pursuant to section 552.103.¹ See Open Records Decision No. 289 (1981) (where records pertaining to criminal litigation are held by both governmental body and prosecutor, demonstration that prosecutor asks that those records not be released triggers litigation exception).

We assume, however, that the offense report at issue has not previously been made available to Wilson or his attorney. Absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). To the extent that Wilson or his attorney has seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Sam Haddad

Assistant Attorney General

Open Records Division

SH/RWP/rho

Ref.: ID# 39587

Enclosures: Submitted documents

cc: Mr. Jay Harvey
Gibbins, Winckler & Harvey
P.O. Box 1452
Austin, Texas 78767
(w/o enclosures)

¹Because we resolve your request under section 552.103, we need not address at this time the other exceptions you raised.